THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

And

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.8265 of 2006

ORDER: ***(per the Hon'ble Sri Justice L.Narasimha Reddy)***

Through an order, dated 23.05.2006, we allowed the Writ Petition and set the detenue free. We herewith supplement the reasons for our order, dated 23.05.2006.

The second respondent herein passed an order, dated 16.03.2006, directing detention of the husband of the writ petitioner, by name Syed Akbar, in exercise of powers under sub-Sections (a) and (b) of Section 3 read with Section 2(a) and (b) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act'). It was alleged that the detenue is a habitual offender and bootlegger. Reference was made to F.I.R. filed in C.O.R.No.224/2005-06, dated 20.11.2005, of the Prohibition Excise Station House, Adilabad and F.I.R.No.12/2006, dated 16.01.2006, of the Police Station I-Town, Adilabad. It was stated that the detenue was deliberately violating the provisions of the A.P.Excise Act and that he is a bootlegger as defined under Section 2(b) of the Act. The involvement of the detenue in certain cases of the years 2003, 2004 and 2005 was also adverted to.

The principal ground, on which the petitioner challenges the order of detention, is that as on the date of order of detention, the detenue was very much in judicial custody and this fact was not at all adverted to in the order of detention or grounds thereof. It is alleged that passing an order of detention, even while the detenue was under the judicial custody, discloses non-application of mind, on the part of the second respondent.

The second respondent filed a counter affidavit. With reference to the principal contention advanced on behalf of the petitioner, it was stated that the order of detention was passed, based on the information furnished to him by the sponsoring authority, whereas the judicial custody of the detenue was referable to Crime No.346/2005-06, dated 02.03.2006. It was pleaded that the registration of the said case did not at all constitute the basis for detention.

Heard Sri Ch.Dhanamjay, the learned counsel for the petitioner and the learned Special Government Pleader.

The object of passing an order of detention under the Act is to disable a citizen from undertaking the acts, which are prohibited under it. The activities that can give raise to such detention are defined and provided for under the Act. The very expression 'preventive detention' connotes that the person is otherwise free and his detention without trial became necessary, on account of the various acts attributed to him. It is axiomatic that if a person is detained in the process of law, in a different set of proceedings, the necessity to pass an order of preventive detention does not exist.

An authority empowered to pass an order of detention is expected to know the activities as well as the capabilities of the person, in question. He is required to apply his mind to all facets of the case, when the order has the effect of denying the civil liberties of a citizen, without requiring him to undergo the process of regular trial. It is in this context that the detaining authority is required to be careful, objective and factually correct in every step that leads to such detention. Any lapse, in this regard, would have the effect of nullifying the order itself.

In the instant case, it is not in dispute that as on the date of the order of detention passed by the second respondent, the detenue was very much in prison, as a measure of judicial custody. The second respondent does not

dispute this fact, but has tried to explain that the judicial custody of the detenue was with reference to a case other than those, which were referred to in the order of detention. Even if the same is true, it hardly constitutes any valid defence. What becomes relevant is the state of affairs obtaining as on the date of passing of the order of detention. When the detenue was in prison with reference to another case, there was no basis for the second respondent to pass the order of detention and it constitutes a clear case of non-application of mind.

On this short ground, the order of detention is liable to be set aside and accordingly, we did so, by allowing the writ petition.

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(L.NARASIMHA REDDY, J)

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(D.APPA RAO, J)

23rd May, 2006.

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

And

THE HON'BLE SRI JUSTICE D.APPA RAO

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Date: 23.05.2006